

1 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Water

4 (New Administrative Regulation)

5 401 KAR 5:072. Concentrated Animal Feeding Operations.

6 RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.20-100, 224.20-110,  
7 224.20-120, 224.70-100, 224.70-110, 33 U.S.C. 1342

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.20-110, 224.70-110,  
9 33 U.S.C. 1342

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the  
11 Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke,  
12 modify, suspend or deny under such conditions as the cabinet may prescribe permits to discharge  
13 into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue  
14 federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control  
15 Act. KRS 224.20-110 authorizes the cabinet to regulate the emission or discharge of air  
16 contaminants into the air under the jurisdiction of the Commonwealth. This administrative  
17 regulation establishes certain conditions applicable to KPDES permits for concentrated animal  
18 feeding operations.

19 Section 1. Applicability.

20 This administrative regulation applies to concentrated animal feeding operations.

21 Section 2. Owner and Operator Liability.

(1) All persons who own or operate a concentrated animal feeding operation shall sign an application for and obtain a KPDES permit. This includes a person who enters into a contract with an owner or operator of a concentrated animal feeding operation if the person:

(a) Owns the animals;

(b) Directs the manner in which the animals will be housed or fed; or

(c) Controls the inputs or other material aspects of the concentrated animal feeding operation.

(2) All owners and operators of a concentrated animal feeding operation shall be jointly and severally liable for complying with the KPDES permit.

### Section 3. Siting Criteria.

(1) A livestock barn, poultry house, lagoon, or land application area constructed or expanded after February 14, 2000 shall not be located in:

(a) A state or national park, state or national forest, or nature preserve; or

(b) A wellhead protection area approved by the cabinet pursuant to 401 KAR 4:220.

(2) A livestock barn, poultry house, or lagoon constructed or expanded after February 14, 2000 shall not be located in:

(a) A 100-year floodplain unless permitted pursuant to 401 KAR 4:060;

(b) A jurisdictional wetland as determined by the Natural Resources Conservation Service; or

(c) A sinkhole or other enclosed depression where subsidence is evident.

(3) The setback requirements established by this subsection apply as follows:

(a) A barn, lagoon, poultry house, litter storage structure, composting site, or waste handling structure constructed or expanded after February 14, 2000 at a concentrated animal feeding operation;

(b) A barn, lagoon, poultry house, litter storage structure, or composting site constructed or expanded after February 14, 2000 at an animal feeding operation, if the construction or expansion will cause the animal feeding operation to become a concentrated animal feeding operation; and

(c) Land application of waste at a concentrated animal feeding operation.

#### BEEF SITING CRITERIA

SETBACK FEATURE <sub>3</sub>	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park <sub>4</sub>	1,500 feet	500 feet	1,000 feet
Incorporated city limit <sub>4,5</sub>	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant <sub>4</sub>	300 feet	150 feet	150 feet
Downstream <sub>1</sub> water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water <sub>2</sub>	1 mile	750 feet	1,500 feet
Downstream <sub>1</sub> public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and Federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

<sub>1</sub>Measured along gradient

<sub>2</sub>Designated outstanding state resource waters are listed in 401 KAR 5:026

<sub>3</sub>Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

<sub>4</sub>Existing at the time the first KPDES permit is issued

<sub>5</sub>For existing operations, land application setbacks do not apply

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## DAIRY SITING CRITERIA

SETBACK FEATURE <sub>3</sub>	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park <sub>4</sub>	1,500 feet	500 feet	1,000 feet
Incorporated city limit <sub>4,5</sub>	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant <sub>4</sub>	300 feet	150 feet	150 feet
Downstream <sub>1</sub> water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water <sub>2</sub>	1 mile	750 feet	1,500 feet
Downstream <sub>1</sub> public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and Federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

2 <sub>1</sub>Measured along gradient3 <sub>2</sub>Designated outstanding state resource waters are listed in 401 KAR 5:0264 <sub>3</sub>Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the  
5 setback feature6 <sub>4</sub>Existing at the time the first KPDES permit is issued7 <sub>5</sub>For existing operations, land application setbacks do not apply

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## POULTRY SITING CRITERIA

SETBACK FEATURE <sub>3</sub>	POULTRY HOUSES, LITTER STORAGE, OR	LAND APPLICATION
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	COMPOSTING SITE	AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park <sub>4</sub>	1,500 feet	300 feet	300 feet
Incorporated city limit <sub>4,5</sub>	2,000 feet	1,000 feet	1,500 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	75 feet
Water well not owned by applicant <sub>4</sub>	300 feet	200 feet	200 feet
Downstream <sub>1</sub> water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water <sub>2</sub>	1 mile	500 feet	500 feet
Downstream <sub>1</sub> public water supply surface water intake	1 mile	500 feet	500 feet
Roadways, primary (state and Federal)	150 feet	75 feet	75 feet
Roadways, secondary (county)	100 feet	75 feet	75 feet

1 <sub>1</sub>Measured along gradient

2 <sub>2</sub>Designated outstanding state resource waters are listed in 401 KAR 5:026

3 <sub>3</sub>Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the  
4 setback feature

5 <sub>4</sub>Existing at the time the first KPDES permit is issued

6 <sub>5</sub>For existing operations, land application setbacks do not apply

## 7 SWINE SITING CRITERIA

SETBACK FEATURE <sub>3</sub>	BARN, LAGOON	LAND APPLICATION
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		AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park <sub>4</sub>	1,500 feet	500 feet	1,000 feet
Incorporated city limit <sub>4,5</sub>	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant <sub>4</sub>	300 feet	150 feet	150 feet
Downstream <sub>1</sub> water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water <sub>2</sub>	1 mile	750 feet	1,500 feet
Downstream <sub>1</sub> public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and Federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

1     <sub>1</sub> Measured along gradient

2     <sub>2</sub> Designated outstanding state resource waters are listed in 401 KAR 5:026

3     <sub>3</sub> Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the  
4     setback feature

5     <sub>4</sub> Existing at the time the first KPDES permit is issued

6     <sub>5</sub> For existing operations, land application setbacks do not apply

7             (d) The cabinet may grant a variance from the setbacks in this section for a dwelling not  
8     owned by the applicant, or church if the applicant obtains from the owner of the property in  
9     question an easement, properly filed of record, granting the applicant a permanent exemption

1 from the distance requirements in this administrative regulation. A certified copy of this  
2 easement shall be submitted to the cabinet with the permit application.

3 Section 4. Permanent Litter Storage.

4 (1) Poultry concentrated animal feeding operations shall provide permanent litter storage  
5 structures by October, 2001.

6 (2) The requirements of Section 3(3) of this administrative regulation do not apply to the  
7 siting of permanent litter storage structures on poultry concentrated animal feeding operations in  
8 existence prior to February 14, 2000.

\_\_\_\_\_  
JAMES E. BICKFORD, Secretary  
Natural Resources and Environmental Protection Cabinet

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
BARBARA A. FOSTER, General Counsel  
Office of Legal Services  
Natural Resources and Environmental Protection Cabinet

\_\_\_\_\_  
Date

**PUBLIC HEARING:** A public hearing on this proposed administrative regulation is scheduled for 6:30 p.m. Central Standard Time, June 29, 2000, at the Madisonville Technology Center, Byrnes Auditorium, 750 North Laffoon Drive, Madisonville, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by June 22, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it.

If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation.

Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

**CONTACT PERSON:** Jack A. Wilson  
Director, Division of Water  
Department for Environmental Protection  
14 Reilly Road  
Frankfort, Kentucky, 40601  
Telephone: (502) 564-3410  
Fax No.: (502) 564-0111

## REGULATORY IMPACT ANALYSIS

**Administrative Regulation #:** 401 KAR 5:072

**Contact person:** Jack A. Wilson

**(1) Type and number of entities affected:**

This administrative regulation applies only to Concentrated Animal Feeding Operations as defined in 401 KAR 5:002. We estimate that there are approximately 237 CAFOs in Kentucky.

**(2) Direct and indirect costs or savings on the:**

**(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received.**

There were no specific comments received regarding the cost of living and employment in the state. Comments focused primarily on two areas: the effect of Concentrated Animal Feeding Operations on property values and the effect of the regulations on farmers. The Cabinet is aware of several conflicting studies on property values, and has concluded that property values and therefore, cost of living in the area, may increase or decrease if this regulation results in fewer Concentrated Animal Feeding Operations in the state. The effect on employment of persons in the agricultural sector is also ambiguous, as large operations have a higher level of automation and may in fact not increase employment in an area to the extent expected. Many persons commented that these operations would put small family farms out of business. Others commented that these facilities, particularly poultry, provide income for farm families to replace lost tobacco income. Related industries such as construction, transportation, and agricultural suppliers may see a decrease in their employment growth if the result is fewer Confined Animal Feeding Operations in the state. However, tourism and recreation may have increased employment with improved air and water quality.

**(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received.**

There will be an increase in the cost of doing business in the agricultural sector if an operation expands to meet the criteria of a Concentrated Animal Feeding Operation as defined in 401 KAR 5:002. There may be an increase in land costs necessary to meet setback requirements. Small producers complain that they will not be able to expand. However, the average farm in Kentucky is 149 acres, and this is sufficient to meet setback requirements in most instances, dependent upon the placement of buildings. There will be additional costs to integrators as they are now responsible for performance. There will also be the requirement for permanent litter storage after 2001. This will require an investment in infrastructure for poultry farmers, but it appears that cost share funds may be available. Some producers complained integrator liability would put them at a competitive disadvantage but other commentators noted that the requirements are expected

to be nationwide so companies located in Kentucky would not be at a competitive disadvantage as compared to other states.

**(c) To the extent available from the public comments received, compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:**

**1. First year following implementation:**

There is a permit fee for an individual permit of \$1200. The permit application will take some time and paperwork and it will take some time to meet the requirements.

**2. Second and subsequent years:**

There will be additional requirements in the case of an expansion of a facility.

**(3) Effects on the promulgating administrative body:**

**(a) Direct and indirect costs or savings:**

**1. First year:**

There will be an increase in costs if there is a significant increase in the number of permit applications.

**2. Continuing costs or savings:**

There will be an increase in costs if there is a significant increase in the number of permit applications.

**3. Additional factors increasing or decreasing costs:**

There are no foreseen factors increasing or decreasing costs at this time.

**(b) Reporting and paperwork requirements:**

There will be an increased burden on the administrative body if there is a consequent increase in permit applications.

**(4) Assessment of anticipated effect on state and local revenues:**

There is no anticipated effect on state and local revenues.

**(5) Source of revenue to be used for implementation and enforcement of administrative regulation:**

The funds to support the implementation and enforcement of this administrative regulation will come from a combination of federal sources (Clean Water Act Section 106 funds) and state funds.

**(6) To the extent available from the public comments received, economic impact, including effects of economic activities arising from administrative regulation, on:**

**(a) Geographical area in which administrative regulation will be implemented:**

The regulation will be implemented in the entire state.

**(b) Kentucky:**

There is an expected positive effect on the economy. Tourism and recreation depend upon clean air and water. If this regulation results in fewer Concentrated Animal Feeding Operations, the effect is ambiguous. There are studies finding an increase in property values, while other studies have found a decrease in property values. The effect on overall employment is ambiguous.

**(7) Assessment of alternative methods; reasons why alternatives were rejected:**

This administrative regulation is in response to the U.S. Department of Agriculture, U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations, March 9, 1999. The federal strategy says that states should address integrator liability. Siting criteria are necessary for developing the comprehensive nutrient management plan. This strategy directs that odor and environmental matters be addressed by the states. This administrative regulation addresses these areas that are void in current state regulation. Other alternatives include doing nothing; voluntary measures; local planning and zoning, etc. Voluntary measures and local planning and zoning are still viable options for other governmental agencies.

**(8) Assessment of expected benefits:**

**(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:**

This administrative regulation is intended to protect public health and the environment.

**(b) State whether detrimental effect on environment and public health would result if not implemented:**

There would be a detrimental effect on the environment and public health if this administrative regulation is not implemented.

**(c) If detrimental effect would result, explain detrimental effect:**

The 1998 305(b) "Report to Congress on Water Quality" has identified agricultural operations as contributors to the impairment of streams in Kentucky. This administrative regulation, with its siting criteria, minimizes this potential impairment and loss of designated uses. The integrator liability provisions of this administrative regulation seek to ensure the proper mitigation or clean up of a spill or accident by ensuring that sufficient funds are available.

**(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:**

There is no known conflict, overlap, or duplication.

**(a) Necessity of proposed administrative regulation if in conflict:**

There is no known conflict.

**(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:**

There is no known conflict.

**(10) Any additional information or comments:**

No.

**(11) TIERING: Is tiering applied? Yes   X   No**

**(Explain why tiering was or was not applied)**

Due to the definitions of Concentrated Animal Feeding Operations, smaller producers who are thought to have less of an impact on public health and the environment are not affected by this administrative regulation, unless they expand their operation to the size of a concentrated animal feeding operation.

## FEDERAL MANDATE ANALYSIS COMPARISON

**Administrative Regulation #:** 401 KAR 5:072

**Contact person:** Jack A. Wilson

- 1. Federal statute or regulation constituting the federal mandate.** 33 U.S.C. 1342.
- 2. State compliance standards.** KRS 224.10-100, 224.16-050, 224.16-060, 224.20-100, 224.20-110, 224.20-120, 224.70-100, 224.70-110.
- 3. Minimum or uniform standards contained in the federal mandate.** The Unified National Strategy presents USDA and EPA's plan for addressing the water quality and public health impacts associated with certain aspects of animal feeding operations.
- 4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?**  
No, based on the U.S. Department of Agriculture, U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations, March 9, 1999.
- 5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.** Not Applicable.

## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401KAR 5:072

Contact person: Jack A. Wilson

New ☒ Amendment ☐

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes ☐ No ☒

2. State what unit, part or division of local government this administrative regulation will affect.

This administrative regulation will not affect any unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates.

This administrative regulation does not relate to local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

**Revenues (+/-):** There is no anticipated effect on current revenues.

**Expenditures (+/-):** There is no anticipated effect on current revenues.

**Other Explanation:** None.